

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Bell Atlantic Corporation)	CC Docket No. 98-11
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of U S West Communications, Inc.)	CC Docket No. 98-26
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of Ameritech Corporation to)	CC Docket No. 98-32
Remove Barriers to Investment in)	
Advanced Telecommunications Technology)	
)	
Petition of the Alliance for Public)	CCB/CPD No. 98-15
Technology Requesting Issuance of Notice)	RM 9244
of Inquiry and Notice of Proposed)	
Rulemaking to Implement Section 706 of)	
the 1996 Telecommunications Act)	
)	
Petition of the Association for Local)	CC Docket No. 98-78
Telecommunications Services (ALTS) for a)	
Declaratory Ruling Establishing Conditions)	
Necessary to Promote Deployment of)	
Advanced Telecommunications Capability)	
Under Section 706 of the Telecommunications)	
Act of 1996)	
)	
Southwestern Bell Telephone Company)	CC Docket No. 98-91
Pacific Bell, and Nevada Bell Petition for)	
Relief from Regulation Pursuant to Section)	
706 of the Telecommunications Act of 1996)	
and 47 U.S.C. § 160 for ADSL Infrastructure)	
and Service)	

**PETITION OF BELL ATLANTIC FOR PARTIAL RECONSIDERATION
OR, ALTERNATIVELY, FOR CLARIFICATION**

The Bell Atlantic telephone companies¹ respectfully request that the Commission clarify or reconsider the Advanced Services Order to the extent it suggests that incumbent local exchange carriers must provide competitors with unbundled loops that are superior in quality to the facilities they provide to themselves or their affiliates. Such a requirement would be flatly contrary to the 1996 Act and unsound as a matter of public policy. In addition, the Commission should reconsider its decision that section 706 provides no independent authority to forbear from applying the requirements of the Act when doing so would promote competition and the deployment of advanced services that would benefit all Americans. That conclusion is contrary to the express terms of the very provision that the Commission relied upon.

Argument

1. In its order, the Commission says that incumbent local exchange carriers must “condition” loops for advanced services by removing loading coils, bridge taps, and other electronic impediments, if technically feasible.² *Memorandum Opinion and Order*, FCC 98-188, ¶ 52 (rel. Aug. 7, 1998) (“Advanced Services Order”). While

¹ Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² These electronic devices were installed to enable the exchange carrier to provide high-quality voice service to its customers and to meet its carrier of last resort obligations. The only devices for which removal is “technically feasible” are those which are no longer required for these purposes.

the order is unclear, it could be interpreted to require carriers to provide such loop conditioning even where they do not perform such work for themselves. If this is the case, then local exchange carriers would be required to provide competitors with "superior access" to what they provide themselves. If the Commission did not intend this result, it should clarify that its order requires nondiscriminatory access to unbundled loops, including to any conditioning that the local exchange carriers provide to themselves.

On the other hand, if the Commission intended this result, the finding is directly contrary to the 1996 Act. The Commission already has found that conditioning local loops to enable competitors to offer advanced digital services constitutes provision of "higher-quality" access to network elements than provision of non-conditioned loops. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 314 and n.680 (1996). The 1996 Act, however, gives incumbent local exchange carriers the duty to provide "nondiscriminatory access to network elements on an unbundled basis." 47 U.S.C. § 251(c)(3). The Eighth Circuit has definitively found that this provision

does not mandate that requesting carriers receive superior quality access to network elements upon demand.... The fact that interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier.

Iowa Util. Bd v. FCC, 120 F.3d 753, 812-13 (8th Cir. 1997) (emphasis added); cert. granted, 118 S.Ct. 879 (1998) ("*Iowa Util.*").³

But that is precisely what the Commission's order could be interpreted to require. Where Bell Atlantic does not condition loops for its own advanced services, not conditioning loops for competitors could not violate any conceivable interpretation of the section 251 non-discrimination standard. No competitor would be favored, and Bell Atlantic's operations would obtain no benefit compared to new entrants.

Requiring incumbent local exchange carriers to provide superior access, and essentially become a construction company for competitors, also would be contrary to sound public policy. The section 251 unbundling provisions were designed to allow competitors to fill in piece parts of their local networks so that they may enter the market while they are building their own facilities. *Iowa Util.* at 816. Where they want to provide services that they cannot technically offer over the incumbents' facilities, the new entrants will have an incentive to deploy their own advanced facilities in order to obtain a competitive advantage over the incumbent. By contrast, conscripting the incumbent into forced labor to modify its own network at the behest of any competitor would undermine these incentives and ultimately deter, rather than promote, facilities-based competition for advanced services.

Turning every incumbent local exchange carrier into a construction company for its competitors also would undermine the incumbent's ability to operate

³ The court's decision on this issue was not challenged in the Supreme Court and therefore is final.

efficiently. Not only would it have to maintain a workforce sufficient to meet its own needs, its carrier of last resort obligations, and the obligations imposed by the 1996 Act, but it also would need to retain and devote substantial additional resources in order to meet an uncertain number of varying demands from its competitors, with no assurance that the costs of these additional resources could ever be recovered fully. Ultimately, this will harm consumers, because they will need to foot the bill for these unnecessary costs.

There also are technical issues relating to the Commission's holding that it failed to address. Conditioning a loop for one advanced service does not necessarily mean that the loop will support other advanced services. If electronics are added to a loop to enable it to support ISDN, for example, the presence of those electronics could disqualify that loop for ADSL. Therefore, an incumbent could not meet a general request to condition loops to support a variety of advanced services, as the Commission appears to require, and it may be technically feasible to condition a loop for one advanced service but not for another.⁴ Advanced Services Order at ¶ 53. Moreover, introducing a new advanced service into an existing cable sheath could interfere with advanced services already being providing through other pairs in that sheath. This is because, at the frequencies at which these services operate, one service may cause induction interference to another service in pairs that are in close proximity. As a result, in order to maintain service to existing customers, it would be necessary to divert an interfering advanced services onto pairs in a different cable sheath.

⁴ For example, the maximum loop length that can support ISDN is significantly longer than for ADSL, and the addition of electronics can extend the length of an ISDN-qualified loop. The same electronics would make any loop unsuitable for ADSL.

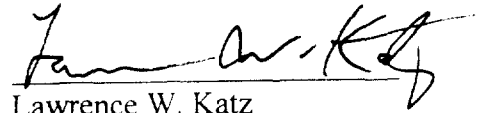
2. The Commission also should reconsider its conclusion that section 706 does not provide independent authority to forbear from applying the Act's requirements when doing so would promote Congress's objectives. *See* Advanced Services Order at ¶¶ 72-73. Contrary to the Commission's finding, the plain language of the Act makes clear that exercising the forbearance authority granted under section 706 is not dependent on meeting the forbearance standards listed in section 10(a).

The Commission cites for its position the provisions of section 10(d), which limit the Commission's authority to forbear to those instances where it can meet the section 10(a) test. *Id.* However, that subsection, by its own terms, limits the Commission's exercise of forbearance authority "under subsection (a) of this section" to meeting the test in that subsection. 47 U.S.C. § 160(d) (emphasis added). On its face, it in no way affects the Commission's exercise of forbearance authority under any other section, and the Commission's order provides no explanation as to how its conclusion can be squared with the express statutory terms.

By contrast, section 706 gives the Commission an affirmative obligation to encourage the deployment of advanced telecommunications by utilizing (among other tools) "regulatory forbearance." Section 706(a). Neither the statutory language nor the legislative history cross-references the section 10(a) test, nor does section 10 require that test be used in section 706 forbearance. Consequently, section 706 itself independently grants the Commission authority to forbear from applying the requirements of the Act when doing so will promote competition and the deployment of advanced services.

Accordingly, the Commission should clarify or reconsider certain provisions of the Advanced Services Order, as discussed above.

Respectfully Submitted,



Lawrence W. Katz
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

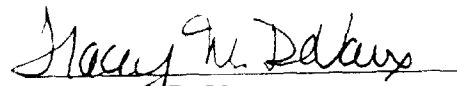
Michael E. Glover
Of Counsel

Attorney for The Bell Atlantic
Telephone Companies

September 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 1998 a copy of the foregoing "Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification" was served by first class mail, postage prepaid, on the parties on the attached list.


Tracey M. DeVaux

TS, Inc.*
919 M Street, NW
Suite 246
Washington, DC 20554

Joel Bernstein
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, NW
Suite 650 East
Washington, DC 20005

Counsel for Next Level Communications

Thomas Gann
Sun Microsystems
1300 I Street, NW
Suite 420 East
Washington, DC 20005

Russell Staiger
BMDA
400 East Braodway Avenue
Bismarck, ND 58501

Cherie Kiser
Michael Bressman
Mintz, Levin
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

John T. Lenahan
Ameritech Corporation
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Counsel for Cablevision Lightpath

Robert McKenna
Jeffrey Brueggeman
US West Inc.
1020 19th Street, NW
Washington, DC 20036

William T. Lake
John Harwood
Jonathan Frankel
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037

Counsel for Southwestern Bell

Lawrence Malone
General Counsel
New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

M. Robert Sutherland
BellSouth Corporation
Suite 1700
1155 Peachtree Stret, NE
Atlanta, GA 30309-3610

James Ellis
BC Communications
One Bell Plaza
Room 3703
Dallas, TX 75202

Ronald Plessner
Mark O'Connor
Stuart Ingis
Piper & Marbury
7th Floor
1200 19th Street, NW
Washington, DC 20036
Counsel for Commercial Internet Exchange
Assn. and PSINet

Kecia Boney
Lisa Smith
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Maureen Lewis
Alliance for Public Technology
901 15th Street, NW
Suite 230
Washington, DC 20037-7146

J. Jeffrey Oxley
Assistant Attorney General
Minnesota Dept. of Public Service
1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Catherine Sloan
Counsel for WorldCom, Inc.
1120 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

Richard Metzger
ALTS
888 17th Street, NW
Washington, DC 20006

William Rooney, Jr.
Counsel for Global NAPs, Inc.
Ten Winthrop Square
Boston, MA 02110

Brad Mutshcelknaus
Edward Yorkgitis
John Heitmann
Kelley, Drye & Warren
1200 19th Street, NW
Suite 500
Washington, DC 20036

Counsel for ACSI

Cheryl Parrino
Public Service Commission of Wisconsin
PO Box 7854
Madison, WI 53707-7854

G. Richard Klein
Indiana Utility Regulatory Commission
302 W. Washington
Suite E-306
Indianapolis, IN 46204

Charles Hunter
Catherine Hannan
Hunter Communications Law Group
1620 I Street, NW
Suite 701
Washington, DC 20006

Counsel for TRA

Randall Lowe
J. Todd Metcalf
Piper & Marbury
1200 19th Street, NW
Washington, DC 20036

Counsel for Transwire Communications

Blossom Peretz
NJ Division of the Ratepayer Advocate
31 Clinton Street
11th Floor
Newark, NJ 07101

Russell Blau
Swidler & Berlin
3000 K Street, NW
Suite 300
Washington, DC 20007-5116

Counsel for Focal Communications, Hyperion
Telecommunications, KMC Telecom and
McLeodUSA

Leon Kestenbaum
Jay Keithley
H. Richard Junke
Sprint Corporation
1850 M Street, NW
Washington, DC 20036

J. Manning Lee
Teresa Marrero
TCG
Two Teleport Drive
Staten Island, NY 10311

Keith Townsend
USTA
1401 H Street, NW
Suite 600
Washington, DC 20005

A. Daniel Sheinman
Laura Ipsen
Cisco Systems
170 West Tasman Drive
San Jose, CA 95134-1706

Carol Weinhaus
Telecommunications Industries Analysis Project
Public Utility Research Center
Meeting House Offices
121 Mount Vernon Street
Boston, MA 02108

John Dodge
Cole, Raywid & Braverman
2nd Floor
1919 Pennsylvania Avenue, NW
Washington, DC 20006-3458

Counsel for FiberNet

Mitchell Lazarus
Hetcher, Heald
300 North 17th Street
Arlington, VA 22209

Counsel for Internet Service Providers'
Consortium

Jonathan Canis
Kelley Drye & Warren
1200 19th Street, NW
Washington, DC 20036

Counsel for Intermedia Communications

Christopher Savage
Karlyn Stanley
Cole, Raywid & Braverman
2nd Floor
1919 Pennsylvania Avenue, NW
Washington, DC 20006-3458

Counsel for Helicon

Aliceann Wolhbruck
National Association of Development
Organizations
444 North Capitol Street, NW
Suite 630
Washington, DC 20001

Franks Simone
AT&T
Suite 1200
1120 20th Street, NW
Washington, DC 20036